

CT Packing Slip



FedEx Tracking # : 794651080350
Created By : Lisa Howard
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Recipient :

Greg Conigliaro	
Title :	--
Customer :	New England Compounding Pharmacy, Inc.
Address :	52 SEARS ROAD
Email :	gconigliaro@neccrx.com
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Fax :	-

Package Type : Envelope
Items shipped : 7

Log #	Case #	Entity Name
522049584	CL122576	New England Compounding Pharmacy, Inc.
522049647	CL122574	New England Compounding Pharmacy, Inc.
522049688	CL122573	New England Compounding Pharmacy, Inc.
522049704	CL122572	New England Compounding Pharmacy, Inc.
522049722	CL122571	New England Compounding Pharmacy, Inc.
522049795	CL122547	New England Compounding Pharmacy, Inc.
522049906	CL122574	New England Compounding Pharmacy, Inc.

RECEIVED FEB 05 2013

NECC



**Service of Process
Transmittal**

01/31/2013

CT Log Number 522049795

TO: Greg Conigliaro
New England Compounding Pharmacy, Inc.
52 SEARS ROAD
SOUTHBOROUGH, MA 01772

RE: Process Served in Florida

FOR: New England Compounding Pharmacy, Inc. (Domestic State: MA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Sharon G. Wingate, Executor of the Estate of Douglas Gary Wingate, Deceased, Plf. vs. Insight Health Corp., et al., Dfts. // To: New England Compounding Pharmacy, Inc., etc.

DOCUMENT(S) SERVED: Motion, Order, Certificate of Service, Attachment

COURT/AGENCY: Roanoke City Circuit Court, VA
Case # CL122547

NATURE OF ACTION: Product Liability Litigation - Drug Litigation - Motion for Extension of Time to Join New England Compounding Pharmacy, Inc. as a Defendant, due to death of Douglas Gray Wingate as the result of contaminated steroid manufactured and sold by New England Compounding Pharmacy, Inc.

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 01/31/2013 at 14:00

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): Brian J. Gerling
Bonner Kiernan Trebach & Crociata, LLP
12230 20th Street, NW
8th Floor
Washington, DC 20036
202-712-7000

REMARKS: Motion was highlighted prior to receipt by CT to reflect the name of the intended recipient.

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 794651080350

SIGNED: C T Corporation System
PER: Donna Moch
ADDRESS: 1200 South Pine Island Road
Plantation, FL 33324
TELEPHONE: 954-473-5503

VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

SHARON G. WINGATE,
EXECUTOR OF THE ESTATE OF
DOUGLAS GRAY WINGATE, DECEASED

Plaintiff,

v.

INSIGHT HEALTH CORP.,
JOHN MATHIS, M.D.,
ROBERT F. O'BRIEN, M.D.,
And
IMAGE GUIDED PAIN MANAGEMENT,
P.C.

Defendants.

Case No. CL12-2547

DATE: 1-31-13 TIME: 2:30 PM

ERIC DEAL

S.P.S. #336

MOTION FOR EXTENSION OF TIME FOR JOINDER

COMES NOW, Defendant INSIGHT HEALTH CORP. ("IHC"), by and through counsel, Bonner Kiernan Trebach & Crociata, LLP, and moves pursuant to Rules 1.9 and 3:12(b) of the Rules of the Supreme Court of Virginia, this Honorable Court to grant an Extension of Time for IHC to file its motion to join New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center ("NECC") to this action because it is a necessary and indispensable party, and states as follows:

1. Plaintiff served its Complaint on IHC's registered agent for service of process in Virginia on January 4, 2013. In her Complaint, plaintiff alleges that her husband died as a result of being injected with an allegedly contaminated steroid manufactured and sold by NECC. (Complaint ¶¶ 75-85.)

2. However, NECC is not a party to this action. Thus, in its absence, among other things, "complete relief cannot be accorded among those already parties." Va. Sup. Ct.

R. 3:12(a). Accordingly, NECC is a necessary and indispensable party to this action. See *Asch v. Friends of Mt. Vernon Yacht Club*, 251 Va. 89, 90 (1996) (a court lacks the power to proceed with a suit unless all necessary parties are properly before the court and, if not, the matter must be dismissed); *Gray v. Virginia Secretary of Transportation*, 77 Va. Cir. 224, 227-228 (Cir. Ct. City of Richmond, 2008) (discussing Va. Sup. Ct. R. 3:12 (a) and (c) and dismissing action because necessary and indispensable party not in the action) (citing *Mendenhall v. Cooper*, 239 Va. 71, 74 (1990) (failure to join necessary and indispensable party mandates dismissal of action)).

3. Rule 3:12(b) sets forth, subject to the provisions of Rule 1:9, that a "motion to join an additional party shall ... be filed with the clerk within 21 days after service of the complaint and shall be served on the party sought to be joined who shall thereafter be subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees."

4. IHC has filed or is filing herewith a Demurrer to Plaintiff's Complaint on the grounds that, among other things, Plaintiff failed to name a necessary and indispensable party to this action. A Demurrer also must be filed within the 21 day requirement after service of this action. That matter has not yet been set for hearing.

5. Accordingly, under the circumstances, and pursuant to Rule 3:12(b) of the Rules of the Supreme Court of Virginia, Defendant IHC's deadline for filing a motion to join NECC would come before any ruling on its Demurrer to the Plaintiff's Complaint – something that is not logical.

6. In the event its Demurrer is granted by this Court, Defendant IHC would have no reason to file a motion to join NECC.

7. In the interests of the Court's economy, the logical sequence of pleadings and rulings thereon, and pursuant to this Court's discretionary powers conferred by Rule 1:9, Defendant IHC requests that this Court set the deadline for a motion pursuant to R. 3:12(b) to join NECC to a reasonable date after this Court has considered and ruled upon the IHC's Demurrer.

WHEREFORE, based on the foregoing, Defendant IHC respectfully requests that this Honorable Court grant its Motion for extending the deadline to permit it to file a motion to join NECC, to the extent it is necessary, no later than 21 days following this Court's ruling on IHC's Demurrer to the plaintiff's Complaint.

Date: January 24, 2013

**BONNER KIERNAN TREBACH & CROCIATA,
LLP**



Christopher E. Hassell, Esquire VSB#30469

Brian J. Gerling, Esquire VSB #75817

Clinton R. Shaw, Jr. VSB#37498

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Counsel for Insight Health Corp.

VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

SHARON G. WINGATE,
EXECUTOR OF THE ESTATE OF
DOUGLAS GRAY WINGATE, DECEASED

Plaintiff,

v.

Case No. CL12-2547

INSIGHT HEALTH CORP.,
JOHN MATHIS, M.D.,
ROBERT F. O'BRIEN, M.D.,
And
IMAGE GUIDED PAIN MANAGEMENT,
P.C.

Defendants.

**ORDER GRANTING DEFENDANT INSIGHT HEALTH CORP.'S
MOTION FOR EXTENSION OF TIME TO JOIN ADDITIONAL PARTIES**

Upon consideration of Defendant Insight Health Corp.'s Motion for Extension of Time to File a Motion to Join Additional Parties pursuant to Rule 3:12(b) of the Rules of the Supreme Court of Virginia, any opposition filed thereto, the record herein, and upon the argument of counsel, it is by this Court on this ____ day of _____, 2013:

ORDERED that the Defendant's Motion for Extension of Time to File a Motion to Join, and it is hereby **GRANTED**, and it is further,

ORDERED that the Defendant Insight Health Corp. file its Motion To Join ____ days following this Court's ruling on Defendant Insight's Demurrer.

Circuit Court Judge

Copies to:

J. Scott Sexton, Esquire (via e-mail)
Rebecca Herbig, Esquire (via e-mail)
Christopher E. Hassell, Esquire (via e-mail)
John J. Jessee, Esquire (via e-mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I caused to be served the foregoing Motion Pursuant to R. 1:9 and 3:12 of INSIGHT HEALTH CORP. via regular mail and email this 24th day of January, 2013 to:

J. Scott Sexton
Gentry Locke Rakes & Moore, LLP
10 Franklin Road, S.E., Suite 800
P.O. Box 40013
Roanoke, Virginia 24022-0013
p540.983.9300
f540.983.9400
sexton@gentrylocke.com

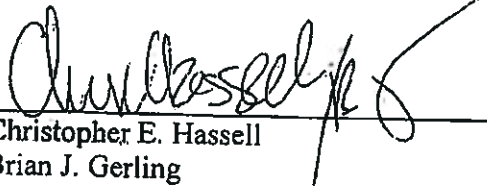
and

Rebecca Herbig
Bowman and Brooke LLP
1111 East Main Street, Suite 2100
Richmond, VA 23219
p804.649.8200
f804.804.649.1762
rebecca.herbig@bowmandandbrooke.com

and

New England Compounding Center
Its Registered Agent of Process: CT Corporation System
4701 Cox Road
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Glen Allen, Virginia, 23060
and

John Jessee
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p540.510.3018
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john.jessee@leclairryan.com



Christopher E. Hassell
Brian J. Gerling

FedEx[®] Express

From: (214) 932-3801
Amber Carrozzini
CT - Dallas SOP Team
350 North St Paul Street
Suite 2000
Dallas, TX 75201

Origin ID: REDA

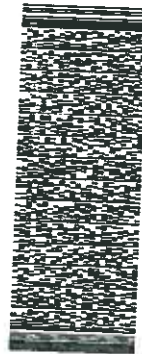


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BILL SENDER

SHIP TO: (908) 420-0606

Greg Conigliaro
New England Compounding Pharmacy, I
52 SEARS ROAD
SOUTHBOROUGH, MA 01772



Ship Date: 31 JAN 13
ActWgt: 1.0 LB
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Delivery Address Bar Code



Ref # SOP14034035204584Amber Carrozzini
Invoice #
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Dept #

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** 2DAY **

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